

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re
85 FLATBUSH RHO MEZZ LLC, et al.,¹
Debtors

Case No. 20-23280 (SHL)
Chapter 11

(Jointly Administered)

STIPULATION OF SETTLEMENT AND AGREED ORDER

This stipulation of settlement (the “Stipulation”) is entered into between TH Holdco LLC (“TH Holdco”) and Greater Shield LLC d/b/a Ground Support Services (“Greater Shield”, and together with the TH Holdco, the “Parties”).

RECITALS

WHEREAS, on December 18, 2020 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of title 11, United States Code §§ 101 *et seq.* (the “Bankruptcy Code”).

WHEREAS, on February 19, 2021, debtor 85 Flatbush RHO Hotel LLC filed its schedules of assets and liabilities [Docket No. 23] (the “Hotel Schedules”), scheduling a prepetition claim of Greater Shield (the “Scheduled Claim”) in the amount of \$369,452.62. Hotel Schedules at 17.

WHEREAS, on March 15, 2021, this Court entered the *Order Establishing Deadline for Filing Proofs of Claim Against the Debtors and Approving the Form and Manner of Notice*

¹ The Debtors (as defined) in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, include: 85 Flatbush RHO Mezz LLC (6184); 85 Flatbush RHO Hotel LLC (5027); and 85 Flatbush RHO Residential LLC (2261).

Thereof [Docket No. 58], which established April 21, 2021 as the bar date for filing prepetition claims against the Debtors (the “Prepetition Bar Date”).

WHEREAS, on July 6, 2022, this Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming TH Holdco LLC’s Second Amended Chapter 11 Plan, As Modified by This Order* [Docket No. 280] (the “Confirmation Order”), which among other things, confirmed *TH Holdco’s Second Amended Chapter 11 Plan* [Docket No. 211] filed on May 26, 2022 (the “Plan”)², approved the *Purchase and Sale Agreement By and Between 85 Flatbush RHO Hotel, LLC and 85 Flatbush RHO Residential LLC as Sellers and TH Holdco LLC* filed on June 27, 2022 [Docket No. 268] and fixed the Administrative Expense Claims Bar Date.

WHEREAS, pursuant to the Plan, TH Holdco committed to pay certain allowed general unsecured claims from the TH Holdco Unsecured Claim Additional Funding. The Plan and Confirmation Order further authorized TH Holdco to file and serve objections to claims. *See* Sections 2.1 and 8.2 of the Plan.

WHEREAS, on December 21, 2022, TH Holdco filed its *Notice of (I) Entry of Order Confirming TH Holdco LLC’s Second Amended Plan, (II) Occurrence Of Effective Date, and (III) Final Deadlines For Filing Certain Claims* [Docket No. 377], which, among other things, set the Administrative Expense Claims Bar Date as January 20, 2023, and established February 21, 2023 as the deadline for TH Holdco to file any objection to claims (the “Claim Objection Deadline”).

WHEREAS, Greater Shield did not file any claims by the Prepetition Bar Date or the Administrative Expense Claims Bar Date.

² Capitalized terms used in this Stipulation but not otherwise defined herein shall have meaning set forth in the Plan.

WHEREAS, by mutual agreement, the Parties have extended the Claim Objection Deadline relating to Greater Shield. *See* Docket Nos. 396, 400, and 404.

WHEREAS, TH Holdco has been in discussions with Greater Shield regarding its potential objections to the Scheduled Claim and to certain postpetition payments made by the Debtors to Greater Shield.

WHEREAS, the Parties have agreed to resolve the potential objections by reducing and allowing the Scheduled Claim in the reduced amount of \$60,000, which shall be paid promptly after this Stipulation is approved by the Court (the “Settlement Payment”).

WHEREAS, the Parties agree that the Settlement Payment will be in full satisfaction of any and all claims Greater Shield may assert against any of the Debtors or their Estates, prepetition, administrative, or otherwise, as well as any and all claims against TH Holdco.

WHEREAS, TH Holdco agrees, on behalf of itself and the Debtors, to not pursue any avoidance actions, actions under § 549 of the Bankruptcy Code, or any other causes of action against Greater Shield, and any such claim against Greater Shield, or potential objections to Greater Shield’s claims, are hereby discharged and released, with prejudice.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Stipulation hereby agree and stipulate as follows:

1. The recitals set forth above are incorporated as part of this Stipulation.
2. Subject to the terms and conditions set forth herein, upon the entry of a final, non-appealable order approving this Stipulation, TH Holdco will pay the Settlement Payment to Greater Shield, pursuant to payment instructions to be provided to TH Holdco by Greater Shield,

which payment will be deemed payment in full satisfaction of any and all claims Greater Shield may assert against any of the Debtors or their Estates, prepetition, administrative, or otherwise, as well as any and all claims against TH Holdco.

3. With the exception of the Settlement Payment, no amount shall be owed to or may be sought by Greater Shield.

4. This Stipulation shall not be binding upon the Parties, and shall not be effective, unless and until the Court enters an order approving this Stipulation.

5. This Stipulation may not be changed, amended, modified, or altered except by written agreement signed by both of the Parties.

6. This Stipulation shall be binding upon and inure to the benefit of the Parties' respective representatives, successors, and assigns.

7. Any notice required to be given pursuant to this Stipulation shall be in writing, shall be delivered by any method that is reasonable in the particular circumstances, and shall be directed to the Parties' respective attorneys at the mailing addresses or email addresses set forth in the pleadings filed with the Court.

8. Each Party shall bear its respective costs and expenses, including but not limited to attorneys' fees, arising from or relating to the matters resolved by this Stipulation.

9. This Stipulation shall be governed by the laws of the State of New York applicable to agreements entered into within such state, excluding the choice of law rules thereof, and by the Bankruptcy Code.

10. This Stipulation constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior agreements or understandings with respect to the subject matter hereof.

11. Each Party acknowledges, warrants, and represents that in executing and delivering this Stipulation, it does so freely, knowingly, and voluntarily, that it had an opportunity to and did discuss its terms and the implications thereof with its attorneys, that it is fully aware of the contents and effect of this Stipulation, and that such execution and delivery is not the result of any fraud, duress, mistake, or undue influence.

12. Each person signing this Stipulation represents and warrants that they have been duly authorized to, and have the requisite authority to, execute and deliver this Stipulation on behalf of the Party they represent, and to bind such Party to the terms and conditions of this Stipulation.

13. The Court shall retain jurisdiction for the purpose of interpreting, implementing, and enforcing this Stipulation and its terms and conditions.

Dated: April 20, 2023
New York, New York

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*Counsel for Greater Shield LLC d/b/a Ground
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Entered: April 25, 2023

SO ORDERED: /s/ Sean H. Lane
Honorable Sean H. Lane
United States Bankruptcy Judge